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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request,
Copies Available From:

Securities and Exchange Commission
Office of Investor Education and Advocacy
Washington, DC 20549-0213

Extension:

Rule 31a-2

SEC File No. 270-174

OMB Control No. 3235-0179

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 31(a)(1) of the Investment Company Act of 1940 (the “Act”) (15 U.S.C. 80a-30(a)(1)) requires registered investment companies (“funds”) and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules. Rule 31a-1 under the Act (17 CFR 270.31a-1) specifies the books and records that each of these entities must maintain. Rule 31a-2 under the Act (17 CFR 270.31a-2), which was adopted on April 17, 1944, specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a-1.

Rule 31a-2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-

1(b)(1)-(4).¹

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years:

- a. all books and records required under rule 31a-1(b)(5)-(12);²
- b. all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates, and all schedules evidencing and supporting each computation of net asset value of fund shares, and other documents required to be maintained by rule 31a-1(a) and not enumerated in rule 31a-1(b);
- c. any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors;
- d. any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund, including

¹ These include, among other records, journals detailing daily purchases and sales of securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting separately for each portfolio security as of the trade date all “long” and “short” positions carried by the fund for its own account, and corporate charters, certificates of incorporation, by-laws and minute books.

² These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, records of all other portfolio purchases or sales, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees, or groups authorizing the purchase or sale of securities for the fund.

any questionnaire and any other document used to determine that a director is not an interested person of the company;

- e. any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel; and
- f. any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act (15 U.S.C. 80a-15(c)) in approving the terms or renewal of a contract or agreement between the fund and an investment advisor.³

- 3. Every underwriter, broker, or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) (“section 17”) for the periods established in those rules.
- 4. Every depositor of a fund, and every principal underwriter of a fund (other than a closed-end fund), must preserve for at least six years records required to be maintained by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity’s transactions with the fund.
- 5. Every investment adviser that is a majority-owned subsidiary of a fund

³ Section 15 of the Act requires that fund directors, including a majority of independent directors, annually approve the fund’s advisory contract and that the directors first obtain from the adviser the information reasonably necessary to evaluate the contract. The information request requirement in section 15 provides fund directors, including independent directors, a tool for obtaining the information they need to represent shareholder interests.

must preserve the records required to be preserved by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) (“section 204”) for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser’s transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, a fund on

(i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of rule 31a-2(f). The fund, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.⁴

⁴ In addition, the fund, or person who maintains and preserves records for the fund, must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the fund may request: (A) a legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and must separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by rule 31a-2(f). In the case of records retained on electronic storage media, the fund, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the fund, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

We periodically inspect the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. Our staff spends a significant portion of its time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

There are 3,484 funds currently operating as of March 31, 2012, all of which are required to comply with rule 31a-2. Based on conversations with representatives of the fund industry and past estimates, our staff estimates that each fund currently spends 220 total hours per year complying with rule 31a-2. Our staff estimates that the 220 hours spent by a typical fund would be split evenly between administrative and computer operation personnel,⁵ with 110 hours spent by a general clerk and 110 hours spent by a senior computer operator. Based on these estimates, our staff estimates that the total annual burden for all funds to comply with rule 31a-2 is 766,480 hours.⁶

The hour burden estimates for retaining records under rule 31a-2 are based on our experience with registrants and our experience with similar requirements under the Act and the rules under the Act. The number of burden hours may vary depending on, among other things, the complexity of the fund, the issues faced by the fund, and the number of series and classes of the fund.

Based on conversations with representatives of the fund industry and past estimates, our staff estimates that the average cost of preserving books and records required by rule 31a-2 is approximately \$70,000 annually per fund. As discussed

⁵ However, the hour burden may be incurred by a variety of fund staff, and the type of staff position used for compliance with the rule may vary widely from fund to fund.

⁶ This estimate is based on the following calculations: 3,484 funds × 220 hours = 766,480 total hours.

previously, there are 3,484 funds currently operating, for a total cost of preserving records as required by rule 31a-2 of approximately \$243,880,000 per year.⁷ Our staff understands, however, based on previous conversations with representatives of the fund industry, that funds would already spend approximately half of this amount (\$121,940,000) to preserve these same books and records, as they are also necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns. Therefore, we estimate that the total annual cost burden for all funds as a result of compliance with rule 31a-2 is approximately \$121,940,000 per year.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 31a-2 is mandatory for all funds. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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This estimate is based on the following calculation: 3,484 funds × \$70,000 = \$243,880,000.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief
Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432
General Green Way, Alexandria, VA 22312; or send an email to:
PRA_Mailbox@sec.gov.

Kevin M. O'Neill
Deputy Secretary

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